

1  
2  
3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE SOUTHERN DISTRICT OF INDIANA**

5 **LINDA GUDE,** ) **Case No.: 1:19-cv-4884**  
6 )  
7 )  
8 ) **JURY TRIAL DEMANDED**  
9 **CAR NOW ACCEPTANCE** )  
10 **CORPORATION d/b/a CNAC,** )  
11 )  
12 **Defendant.** )

13 **COMPLAINT**

14 LINDA GUDE (“Plaintiff”), by and through her attorneys, KIMMEL &  
15 SILVERMAN, P.C., alleges the following against CAR NOW ACCEPTANCE  
16 CORPORATION D/B/A CNAC (“DEFENDANT”):

17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection  
19 Act, 47 U.S.C. §227.

20 **JURISDICTION AND VENUE**

21  
22 2. This Court’s jurisdiction arises under 28 U.S.C. § 1331, which grants  
23 this Court original jurisdiction of all civil actions arising under the laws of the  
24 United States.  
25

1           3.     Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.  
2 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3  
4           4.     Defendant regularly conducts business in the State of Indiana, thus,  
5 personal jurisdiction is established.

6           5.     Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2).

7  
8                           **PARTIES**

9           6.     Plaintiff is a natural person residing in Indianapolis, Indiana 46229.

10          7.     Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

11          8.     Defendant is a corporation with its principal place of business located  
12 at 12802 Hamilton Xing Boulevard, Carmel, Indiana 46032.

13  
14          9.     Defendant is a “person” as that term is defined by 47 U.S.C.  
15 §153(39).

16          10.    Defendant acted through its agents, employees, officers, members,  
17 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
18 representatives, and insurers.  
19

20                           **FACTUAL ALLEGATIONS**

21          11.    Plaintiff has a cellular telephone number.

22          12.    Plaintiff has only used this number as a cellular telephone number.  
23  
24  
25  
26  
27  
28

1           13. Defendant placed repeated harassing telephone calls to Plaintiff on her  
2 cellular telephone number regarding an alleged debt that was incurred primarily for  
3 personal, family or household purposes.  
4

5           14. During this time, Defendant called Plaintiff on her cellular telephone  
6 utilizing an automatic telephone dialing system and/or pre-recorded voice or  
7 message.  
8

9           15. Plaintiff knew that Defendant was calling using an automated  
10 telephone dialing system and/or pre-recorded voice as calls often began with a  
11 pause or delay prior to speaking with one of Defendant's collectors.  
12

13           16. Defendant's calls were not made for emergency purposes.  
14

15           17. Soon after the calls began Plaintiff told Defendant to stop calling her.  
16

17           18. Once Defendant was aware that its calls were unwanted, its continued  
18 calls could have served no lawful purpose, and could only have been placed for the  
19 purpose of harassment.  
20

21           19. However, Defendant ignored Plaintiff's request and continued calling  
22 Plaintiff, knowing at all times that its calls were unwanted.  
23

24           20. Plaintiff found Defendant's calls to be harassing, intrusive, and  
25 distressing.  
26

27           21. Defendant's actions as described herein were taken with the intent to  
28 harass, upset, and coerce payment from Plaintiff.

**COUNT I**  
**DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
**PROTECTION ACT**

22. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

23. The TCPA prohibits placing calls using an automatic telephone dialing system or automatically generated or prerecorded voice to a cellular telephone except where the caller has the prior express consent of the called party to make such calls or where the call is made for emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

24. Defendant initiated multiple telephone calls to Plaintiff's cellular telephone number using an automatic telephone dialing system.

25. Defendant's calls were not made for "emergency purposes."

26. Defendant's calls to Plaintiff's cellular telephone after she revoked consent were not made with Plaintiff's prior express consent.

27. Any consent Defendant may have thought it had to call Plaintiff on her cellular telephone using an automatic telephone dialing system or prerecorded voice was revoked at the moment Plaintiff told defendant to stop calling her.

28. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

1           29. The acts and/or omissions of Defendant were done unfairly,  
2 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
3 lawful right, legal defense, legal justification or legal excuse.  
4

5           30. As a result of the above violations of the TCPA, Plaintiff has suffered  
6 the losses and damages as set forth above entitling Plaintiff to an award of  
7 statutory, actual and trebles damages.  
8

9  
10                                   **PRAYER FOR RELIEF**

11           WHEREFORE, Plaintiff, LINDA GUDE, respectfully prays for a judgment as  
12 follows:  
13

- 14                   a. All actual damages suffered pursuant to 47 U.S.C. §  
15                   227(b)(3)(A);  
16                   b. All actual damages suffered pursuant to 47 U.S.C. §  
17                   227(b)(3)(A);  
18                   c. Statutory damages of \$500.00 per violative telephone call  
19                   pursuant to 47 U.S.C. § 227(b)(3)(B);  
20                   d. Treble damages of \$1,500.00 per violative telephone call  
21                   pursuant to 47 U.S.C. §227(b)(3);  
22                   e. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and  
23                   f. Any other relief deemed appropriate by this Honorable Court.  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, LINDA GUDE, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: 12/11/19

By: /s/ Joseph C. Hoeffel  
Joseph C. Hoeffel, Esq.  
Kimmel & Silverman, P.C.  
30 East Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Facsimile: (877) 788-2864  
Email: [teamkimmel@creditlaw.com](mailto:teamkimmel@creditlaw.com)